IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

OMP Nos.507 of 2004 and 459 of 2005.
In Arbitration Case No.37 of 2004.

Date of decision: 28.12.2005.

Shri Nirmal Singh Gill **Petitioner.**

Versus

Shri Mohnish Ahluwalia and another. **Respondents.**

Coram

The Hon'ble Mr. Justice V.M.Jain, J.
Whether approved for reporting[1]*?*

For the petitioner: **Mr.K.D.Sood, Advocate.**

For the respondent: **Mr.Paresh Sharma, Advocate for respondents No.2 and 3.**

Mr. R.S.Verma, Advocate for Indian Oil Corporation.

None for respondents No.1 and 2.

V.M.Jain, J.(oral)

Nirmal Singh Gill petitioner, had filed petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for the grant of interim relief. This petition was filed against Mohnish Ahluwalia and M/s. Pyare Lal Gee Gee Ess, a partnership firm, through Mohnish Ahluwalia as its partner. Subsequently, vide order dated 21.11.2004 Ram Saran Dass Ahluwalia and Smt. Manjeet Ahulwalia were ordered to be impleaded as respondents No.3 and 4 in the said petition. In the meanwhile, aforesaid Ram Saran Dass Ahluwalia and Smt. Manjeet Ahulwalia filed application bearing OMP No.507 of 2004

---

[1] Whether the reporters of Local Papers may be allowed to see the Judgment?

for impleading Indian Oil Corporation as party in the main petition. They also filed an application bearing OMP No.459 of 2005 under Section 9 of the Act for interim directions.

When both these applications came up for hearing before me today, the learned counsel appearing for the petitioner, namely, Nirmal Singh Gill, produced before me a copy of the order dated 9.5.2005 passed by Hon'ble the Chief Justice, in Arbitration Case No.28 of 2004, vide which Shri Justice Surinder Sarup, a former Judge of this Court, was appointed as the Single Member Arbitral Tribunal and both the parties were given the liberty to file claims/counter claims before the Arbitrator and the Arbitrator was to immediately enter upon the reference and to pass the arbitral award in due course of time.

The learned counsel appearing or the parties (other than Indian Oil Corporation) submitted before me that the Arbitrator has already entered upon the Arbitration and the dispute is pending consideration before the Arbitrator.

As referred to above, the petitioner had filed the main petition bearing Arbitration Case No.37 of 2004 in this Court under Section 9 of the Act for the grant of Interim Relief. Vide order dated 1.9.2004 an interim order was passed by this Court. Subsequently, vide order dated 28.1.2005, the aforesaid order dated 1.9.2004 was modified by this Court, on the application filed on behalf of the respondents.

Today, when the aforesaid applications came up for hearing before me and learned counsel for the petitioners had produced

before me a copy of the order dated 9.5.2005 passed by Hon'ble the Chief Justice, appointing the Arbitrator, I had put it to the learned counsel for the parties as to what had survived in the main petition, bearing Arbitration case No.37 of 2004, for the grant of Interim Relief, especially when Arbitrator has since been appointed and the Arbitrator has entered upon Arbitration and the matter is pending before the Arbitrator and under the provisions of the Act, the Arbitrator is competent to pass interim orders in accordance with law. The learned counsel appearing for the parties submitted before me that they have no objection if the main case i.e. Arbitration Case No.37 of 2004 is disposed of by this Court, to enable the Arbitrator to pass appropriate interim orders in accordance with law at the instance of the parties concerned.

In view of the stand taken before me by the learned counsel for the parties, the main petition bearing Arbitration Case No.37 of 2004 is taken up for consideration.

Arbitration Case No.37 of 2004

As referred to above, this petition under Section 9 of the Act was filed by the petitioner for the grant of Interim Relief. Vide ex-parte order dated 1.9.2004, some interim orders were passed by this Court and the same were modified, vide order dated 28.1.2005, after hearing both sides. In the meanwhile, the matter has already been referred to the Arbitrator, who has already entered upon the Arbitration and is seized of the matter and is competent to pass interim orders.

In this view of the matter, in my opinion, nothing survives so far as the present petition, bearing Arbitration Case No.37 of 2004 is concerned. In view of above, present petition bearing Arbitration Case No.37 of 2004 is disposed of with the stipulation that the parties concerned would be at liberty to approach the Arbitrator for the grant of interim measures. It is directed that if any such application is filed, the Arbitrator would be at liberty to dispose of the same in accordance with law. So far as the orders dated 1.9.2004, as modified vide order dated 28.1.2005, are concerned, the same shall continue to operate till 15.3.2006. In the meanwhile, if any application is filed before the Arbitrator for the grant of interim measures, the Arbitrator would pass appropriate orders thereon in accordance with law, without being prejudiced by the aforesaid orders passed by this Court.

With these observations, the main petition, bearing Arbitration Case No.37 of 2004, is disposed of.

OMP Nos.507 of 2004 and 459 of 2005

Infructuous.

December 28, 2005 (V.M.Jain),J.
(SDS)